

REMARKS

In the Office Action dated July 20, 2009, claims 21, 22, 24-27, 29 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Niederdrank.

This rejection is respectfully traversed for the following reasons.

In Applicants' previous response, wherein the aforementioned claims were presented, the Niederdrank reference is concerned solely with detecting the hearing *environment* in which a first hearing aid of a binaural hearing aid system is located, so as to then cause the other hearing aid in the binaural system to operate under the same conditions as the first hearing aid. This precludes the possibility of the two hearing aids, since they are being worn at the respective ears of a hearing-impaired person, and thus are separated from each other by a small distance, it is possible that the second hearing aid might detect a different acoustic environment from the first hearing aid, and if the second aid were permitted to set itself independently of the first hearing aid, the two hearing aids might be set differently, and would thus compete with each other, leading to an uncomfortable situation for the hearing-impaired person.

Therefore, it is essential to the intended operation of the system disclosed in the Niederdrank reference that the information that is detected with respect to the first hearing aid is *not* an internal operating characteristic, but is instead the external acoustic environment in which that hearing aid is situated. It is only because the two hearing aids in the binaural system are separated, by virtue of the necessity of being worn on opposite sides of the head of the hearing-impaired person, which the problem addressed in the Niederdrank reference occurs. A similar problem does not exist with regard to the internal circuitry of the two hearing aids, because the internal

circuitry is, or can be, identical in both hearing aids, and therefore in order to solve the problem to which the Niederdrank system is addressed, detecting a parameter of the internal circuitry, as claimed in the present application, would be irrelevant.

Therefore, regardless of whether the Shennib reference operates as suggested by the Examiner, there would no reason why a person of ordinary skill in the field of designing hearing aids or hearing aid systems would seek to modify the Niederdrank system in accordance with the teachings of Shennib, because the aforementioned problem of making sure that both hearing aids in a binaural system are operating according to the same acoustic environment would not be addressed by the Shennib reference. If the modifications disclosed in the Shennib reference were used to replace the modifications that are disclosed in the Niederdrank reference, then the very problem that the Niederdrank reference is designed to overcome, namely avoiding two hearing aids in a binaural system from individually setting themselves according to two differently-detected acoustic environments, would not be solved, and thus the entire purpose of the Niederdrank system would be defeated.

Although Applicants believe that these features that differentiate the claims from the Niederdrank/Shennib combination are clearly present in the previous claim language, each of the independent claims of the application has been amended to make clear that the measurement device and the setting device are respectively separate from, and external to, the first and second hearing aids. Moreover, each of the claims has been amended to state that the measurement device is only temporarily in active communication with the first hearing aid device, and the setting

device is only temporarily in active communication with the second hearing aid device.

The fact that the measurement device is separate from and external to the first hearing aid is inconsistent with the purpose and goals of the Niederdrank system, because that system strives to always set the first and second hearing aids of the binaural system to the same acoustic environment. Bringing the first hearing aid into active communication with a measurement device that is separate from and external to the first hearing aid device would mean that the hearing-impaired person would always have to be able to be in communication with such an external measurement device, which would be impractical. The same would apply to the use of an external setting device in the Niederdrank system.

Applicants therefore submit that none of claims 21, 22, 24-27, 29 or 20 would have been obvious to a person of ordinary skill in the field of designing hearing aids, under the provisions of 35 U.S.C. §103(a) as being unpatentable over Niederdrank. These arguments also apply to the rejection of claims 23 and 28 under 35 U.S.C. §103(a) as being unpatentable over Niederdrank in view of Shennib.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,



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